

## IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

MAYCEE GARDNER, A MINOR,  
 BY AND THROUGH HER MOTHER  
 AND NEXT FRIEND, CYNDEE GARDNER

Plaintiff,

v.

PRIME TANNING CORP., et al.,

Defendants.

Case No. ~~09CV-CV00333~~

09DK -02 00056

**FILED**

JUL 09 2009

JULIE WHITSELL  
 Circuit Clerk & Ex-Officio Recorder  
 DE KALB COUNTY, MO

**NATIONAL BEEF LEATHERS' REPLY TO PLAINTIFFS' RESPONSE  
 TO APPLICATION FOR CHANGE OF VENUE**

National Beef Leathers, LLC ("NBL") replies to Plaintiffs' response to NBL's Application for Change of Venue as follows:

The only consideration for the Court in its decision whether to transfer venue to Livingston County is convenience to the parties. M.R.C.P. 51.03. Plaintiffs' contention that Jackson County or St. Louis City is better equipped than Livingston County to handle this case is irrelevant to the issue of convenience, and they cite no authority to support the argument that the judges and staff of the Livingston County Court are not fully capable of handling this case.

Also contrary to Plaintiffs' argument, Livingston County will not be inconvenient to fact or expert witnesses, who likely would only be called to testify in Livingston County once, at the time of trial. Typically, depositions of witnesses occur where the witnesses are located or at some other agreed-upon location, and not necessarily near the trial venue. And convenience to attorneys is irrelevant to the Court's consideration. Livingston County, therefore, remains the most convenient alternative venue for this case.

Furthermore, Plaintiff Gardner and two additional sets of plaintiffs have filed three other cases with similar allegations where they seek class certification that would include as plaintiffs the residents of four of the six counties that comprise the Forty-Third Judicial Circuit, namely Andrew, Buchanan, Clinton and DeKalb Counties.<sup>1</sup> There is no merit to these cases, whether or not certified as class actions. Regardless, Livingston County is the closest venue in the Forty-Third Judicial Circuit for those with an interests that may be affected in this and other related litigation and is therefore more convenient than Jackson County or St. Louis City.

WHEREFORE, for the reasons set forth here and in its Application for Change of Venue, NBL respectfully requests the Court to transfer this lawsuit to Livingston County and to grant NBL such further relief as this Court deems appropriate.

Date: JUL 8, 2009

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT NATIONAL  
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<sup>1</sup> These cases are Nicholson, et al. v. Prime Tanning, et al., Case No. 09DK-CC00052, Gardner, et al. v. Rockwool Industries, Inc., et al., Case No. 08CN-CV00692, and Hclms, et al. v. Rockwool Industries, et al., Case No. 08CN-CV00693.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **NATIONAL BEEF LEATHERS' REPLY TO PLAINTIFFS' RESPONSE TO APPLICATION FOR CHANGE OF VENUE** has been deposited in the U.S. Mail, first class postage prepaid, this 8th day of July, 2009, to the following:

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